

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

|  |   |                             |
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| <b>In the Matter of</b>                              | ) |                             |
|  | ) |                             |
| <b>New York State Electric &amp; Gas Corporation</b> | ) | <b>WT Docket No. 06-173</b> |
|  | ) |                             |
| <b>Request for Extension and Consolidation of</b>    | ) |                             |
| <b>Construction Deadlines</b>                        | ) |                             |

**To: The Wireless Telecommunications Bureau**

**COMMENTS OF  
NEW YORK STATE ELECTRIC & GAS CORPORATION**

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Dated: October 16, 2006

## **EXECUTIVE SUMMARY**

New York State Electric & Gas Corporation ("NYSEG"), a subsidiary of Energy East Corporation and provider of electric and natural gas service across more than forty percent of upstate New York, hereby supplements and elaborates on its request for an extension and consolidation of the construction deadlines for its Part 22 Paging and Radiotelephone Service and Part 90 Private Land Mobile Radio Service licenses.

NYSEG meets the standard for a waiver of the construction deadlines until December 31, 2009. Specifically, NYSEG recently acquired these licenses for use in an innovative, spectrum-efficient radio system that will provide coverage to some of the most rural portions of New York State. Although NYSEG has made considerable progress on the implementation of these licenses, it requires an extension to accommodate the size and complexity of the radio system and the unavoidable delays associated with Canadian frequency coordination. As a testament to NYSEG's good faith efforts, it will voluntarily return 119 unused Paging and Radiotelephone Service licenses for licensing to eligible entities.

An extension would also serve the public interest because NYSEG will operate the licenses in support of critical utility communications. While NYSEG will rely on this radio system to ensure the safe and efficient delivery of electric and gas service, it will also use it to intercommunicate with public safety users. An extension would also enable NYSEG to avoid wasting valuable resources in the construction of a technologically inferior system.

Finally, enforcement of the current construction deadlines would impose inequitable and unduly burdensome obligations on NYSEG's unique radio system. NYSEG also has no reasonable alternative to an extension of the construction deadlines.

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NEW YORK STATE ELECTRIC & GAS CORPORATION**

New York State Electric & Gas Corporation ("NYSEG"), through its undersigned counsel, hereby submits these Comments in response to the *Public Notice* in the above-captioned matter.<sup>1</sup> The *Public Notice* seeks comment on NYSEG's Request for Extension of Time and Consolidation of Construction Deadlines ("*Request*"). In this *Request*, which was filed on June 15, 2006,<sup>2</sup> NYSEG sought a waiver of the final construction deadline for its Part 22 Paging and Radiotelephone Service licenses. In addition, NYSEG requested an extension of the construction deadlines for its Part 90 Private Land Mobile Radio Service ("PLMRS") licenses. NYSEG also asked the FCC to establish a consolidated construction deadline of December 31, 2009, for its 51-site, statewide, private, internal radio system ("Radio System").

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<sup>1</sup> Wireless Telecommunications Bureau Seeks Comment on Request by New York State Electric & Gas Corporation for Extension of Time and Consolidation of Construction Deadlines for Part 22 and Part 90 Licenses, WT Docket No. 06-173, *Public Notice*, 21 FCC Rcd 10255 (2006) [hereinafter *Public Notice*].

<sup>2</sup> On October 2, 2006, NYSEG filed an amendment to the *Request* in the Universal Licensing System and in WT Docket No. 06-173. This amendment added five recently acquired call signs to the original *Request*. These new licenses consist of three Part 22 licenses, call signs WPVF791 (File No. 0002771223), WPWK676 (File No. 0002771224), and WPWK677 (File No. 0002771225), as well as two Part 90 licenses, call signs WQFE309 (File No. 0002771229) and WQFM860 (File No. 0002771230).

Although NYSEG believes that the *Request* set forth a sound basis for an extension and consolidation of the construction deadlines, it files these Comments to supplement the record and elaborate on the reasons why the requested relief would be in the public interest. The Comments describe NYSEG's considerable progress on the construction of its Radio System. Over the past several months, NYSEG has acquired additional licenses, entered into an agreement with an equipment vendor, executed leases for transmitter sites, and filed scores of applications requesting frequency coordination from Industry Canada. NYSEG has also retained an engineering firm that has been assisting with frequency planning, site profiling, and connectivity projects, among other activities.

This progress bolsters the reasons for extending and consolidating the construction deadlines. In particular, this progress demonstrates that NYSEG has no intention of warehousing the Part 22 and Part 90 spectrum. NYSEG will instead implement a state-of-the-art, spectrum-efficient system to provide coverage to some of the most rural portions of New York State in support of its critical utility communications. Based on the unique circumstances of NYSEG's Radio System, and the resources it has invested in the radio project, the application of the construction deadlines would impose inequitable and unduly burdensome obligations. The FCC has granted extensions of construction deadlines for licensees in similar circumstances.

## **I. BACKGROUND**

The FCC may grant a waiver of its rules when (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome, or

contrary to the public interest, or the applicant has no reasonable alternative.<sup>3</sup> Alternatively, the FCC may grant a waiver of the construction deadlines for "good cause."<sup>4</sup>

Although the *Request* provided a basis for a waiver of the construction deadlines for the Part 22 Paging and Radiotelephone Service licenses, the following sections elaborate on those reasons for granting a waiver and incorporate additional factors. NYSEG also recommends relying on section 1.925 or section 1.3 to extend the construction deadlines for the Part 90 PLMRS licenses. Based on the *Request* and these Comments, the waiver request meets these standards and should be granted.

## **II. A WAIVER WOULD NOT FRUSTRATE THE UNDERLYING PURPOSES OF THE CONSTRUCTION DEADLINES**

Section 309(j)(4)(B) of the Communications Act of 1934, as amended, requires the FCC to promulgate construction requirements for auctioned spectrum that (1) "prevent stockpiling or warehousing of spectrum;" (2) "promote investment in and rapid deployment of new technologies and services;" and (3) "ensure prompt delivery of service to rural areas."<sup>5</sup> The FCC also considers the promotion of spectrum use to be an important policy objective for spectrum regulated under Part 90. In this case, a waiver would not only be consistent with each of these statutory goals, but it also would promote spectrum use. Furthermore, a waiver would be consistent with congressional and FCC efforts to introduce more flexibility for geographic-area licensees in the Paging and Radiotelephone Service.

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<sup>3</sup> 47 C.F.R. § 1.925 (2005).

<sup>4</sup> *Id.* § 1.3.

<sup>5</sup> 47 U.S.C. § 309(j)(4)(B) (2001).

#### **A. NYSEG Will Not Stockpile or Warehouse Spectrum**

A waiver of the construction deadlines would not result in the warehousing of spectrum by NYSEG. As described below, NYSEG recently acquired several licenses for use in the Radio System and has taken concrete steps to operate on those licenses. NYSEG will also voluntarily return 119 Paging and Radiotelephone Service licenses for licensing to eligible entities.

The FCC has extended the construction period for licensees that acquired their spectrum shortly before the deadline.<sup>6</sup> For example, in *Telecorp PCS*, the FCC extended the five-year interim construction deadline for a PCS licensee, in part, because the licensee had "obtained the partitioned licenses with just over two years to provide a level of coverage that licensees must normally meet in five years."<sup>7</sup> NYSEG will also acquire many of its licenses shortly before their respective construction deadlines, including approximately two thirds of its Part 22 licenses within nine months of their five-year deadlines.

Although the FCC noted that these licensees had made diligent efforts to construct their systems, NYSEG has likewise taken concrete steps to operate on its licenses. In particular, NYSEG has made tremendous strides in the (1) acquisition of spectrum; (2) design and preparation of a frequency plan; (3) development of an implementation schedule; (4) filing of

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<sup>6</sup> *E.g.*, In re Summit Wireless, LLC and Summit Wireless WOW, LLC, File Nos. 0000818492, et al, *Order*, 17 FCC Rcd 10914, 10916 ¶ 5 (2002) (granting waiver to licensee that acquired licenses *less than 16 months* before the five-year interim construction deadline); In re Monet Mobile Networks, Inc., File Nos. 0000707917, et al, *Order*, 17 FCC Rcd 6452, 6454 ¶ 6 (2002) (granting waiver to licensee that acquired licenses *less than 18 months* before the five-year interim construction deadline); In re West Virginia PCS Alliance, L.C., File No. 0000182956, *Order*, 16 FCC Rcd 18924, 18926-27 ¶ 7 (2001) (granting waiver to licensee that acquired licenses *three years* before the five-year interim construction deadline); In re Telecorp PCS, LLC, File Nos. 0000182612, et al, *Order*, 16 FCC Rcd 18917, 18922 ¶ 11 (2001) (granting waiver to licensee that acquired licenses *over two years* before the five-year interim construction deadline).

<sup>7</sup> *Telecorp PCS*, 16 FCC Rcd at 18922 ¶ 11.

applications for frequency coordination from Industry Canada; (5) execution of an agreement with an equipment vendor; (6) acquisition, profiling, and development of transmitter sites; and (7) satisfaction of connectivity and backhaul requirements. The FCC has considered these and similar factors when weighing whether to grant extensions of construction deadlines. The following sections detail NYSEG's progress in these areas and incorporate developments from the four months since NYSEG initially filed the *Request*.

#### 1. Spectrum Acquisition

NYSEG has acquired several Part 22 and Part 90 licenses for use in the new Radio System. As discussed in the *Request*, NYSEG entered into agreements to purchase Part 22 licenses from various geographic-area licensees on the secondary market. NYSEG also acquired Part 22 licenses directly from the FCC after participating in Auction No. 48.<sup>8</sup> Furthermore, NYSEG licensed Part 90 frequencies through the frequency coordination process. In the four months since filing the *Request*, NYSEG has acquired an additional seventeen Part 22 licenses for 152/158 MHz paired frequencies from three different geographic-area licensees and another two Part 90 licenses from the FCC.<sup>9</sup>

Although NYSEG has licensed most of the frequencies required for the Radio System, it still has several assignment applications pending at the FCC for the additional frequencies necessary to cover its expansive utility service area and meet its critical utility communications

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<sup>8</sup> For the Part 22 licenses, NYSEG also obtained any necessary regulatory approvals to operate a private, internal system, including waivers of the common carrier eligibility requirements and the power limitations on dispatch communications.

<sup>9</sup> FCC File Nos. 0002567428 (WPWK676 and WPWK677); 0002664038 (WPVF791); 0002609902 (WPVI592, WPVI593, WPVI594, WPVI595, WPVI596, WPVI597, WPVI598, WPVI600, WPVI601, WPVI602, WPVI603, WPVI604, WPVI605, WPVI607); 0002384063 (WQFE309); and 0002650017 (WQFM860).



requirements.<sup>10</sup> Specifically, in late July 2006, NYSEG filed three assignment applications for a total of twenty-six Part 22 licenses.<sup>11</sup> NYSEG was also required to wait more than one year to secure the FCC's final approval for the assignment of two partitioned and disaggregated Part 22 licenses, due to a technical waiver request submitted by the assignor.<sup>12</sup> Even though NYSEG will not require a construction extension for all of these licenses, their acquisition will enable it to move forward with other interrelated aspects of the project, such as the frequency plan, that will affect the construction of the licenses listed in the *Request*.

## 2. Frequency Plan

The FCC has also extended construction deadlines when the licensee retained consultants to assist with the design and implementation of the system. In *Beaver County*, the FCC granted an extension of the construction deadline to permit a PLMRS licensee to upgrade and consolidate its system.<sup>13</sup> The licensee had "invested \$70,000 in the proposed system by hiring [an engineering consultant] to assist with selection of the best viable technical solution, system design and implementation of the proposed public safety radio system."<sup>14</sup> The FCC concluded that the hiring of a consultant "demonstrate[d] the [licensee's] continuing commitment to

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<sup>10</sup> The FCC has granted construction waivers to licensees because of delays in processing assignment applications. *E.g.*, In re Estate of Carl Wancho Station WPCW658, *Order*, 14 FCC Rcd 20738, 20738 ¶ 1, 3 (1999).

<sup>11</sup> FCC File Nos. 0002685280, 0002685281, and 0002695558.

<sup>12</sup> FCC File No. 0002302759. Although the FCC issued a Public Notice announcing the final approvals necessary to proceed with this assignment on October 11, 2006, the parties have not yet consummated it.

<sup>13</sup> In re County of Beaver, FCC File Nos. 0000843248, et al, *Memorandum Opinion and Order*, 18 FCC Rcd 18754, 18757 ¶ 10-11 (2003).

<sup>14</sup> *Id.* ¶ 10.

constructing [the call sign], and its need for the license."<sup>15</sup> Based in part on this conclusion, the FCC extended the construction deadline for the licensee's single call sign by one year.<sup>16</sup>

Similarly, NYSEG has retained an engineering firm to assist with the design of the Radio System and the preparation of a frequency plan. Although a frequency plan was initially prepared several months ago, the engineering firm continues to revise it to address several challenges arising from the size and complexity of the Radio System. As discussed elsewhere, the frequency plan will necessarily remain unsettled until NYSEG (1) completes its license acquisitions, (2) determines the precise technical and operational parameters necessary to protect incumbent licensees in the United States, (3) obtains frequency coordination from Industry Canada for transmitters operating above Line A, and (4) finishes the site profiling necessary to protect incumbent licensees. Every change to a frequency or site may require the modification of this frequency plan. Once NYSEG finalizes the frequency plan, it will take the necessary steps to begin construction of the sites in the Radio System.

### 3. Implementation Schedule

As in *Beaver County*, NYSEG's engineering firm has developed a tentative implementation schedule for the Radio System, consisting of four regions that are divided geographically based on frequency coordination issues with U.S. and Canadian incumbents. NYSEG anticipates completing the implementation of (1) the twenty sites in the Region 1 by mid-April 2008; (2) the eleven sites in Region 2 by mid-August 2008; (3) the fourteen sites in Region 3 by early October 2008 and (4) the six sites in Region 4 by early November 2008. Based on this tentative schedule, NYSEG generally plans to initiate the implementation in

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ¶ 11.

southeastern New York, move into central and western New York, and finish in northeastern New York.

#### 4. Frequency Coordination

The FCC has also granted extensions of construction requirements based on the uncertainty surrounding frequency coordination with Industry Canada.<sup>17</sup> In *Niagara Mohawk*, the FCC extended the construction deadline for stations above Line A and related stations below Line A until after the announcement of a frequency coordination agreement between the United States and Canada.<sup>18</sup> The FCC granted the licensee "additional time to construct its stations rather than requiring it to risk substantial sums constructing a system, the continued viability of which is subject to conditions beyond [the licensee's] control."<sup>19</sup>

NYSEG must secure approval from Industry Canada for sites above Line A before proceeding with the construction and operation of its Radio System. As in *Niagara Mohawk*, the frequency coordination requirement affects the nineteen proposed base station sites above Line A, as well as the related thirty-two proposed base station sites below Line A. Over the past year, NYSEG has filed eighty-nine modification applications to request Canadian frequency coordination for the operation of its Part 22 licenses. These applications implicate many of the frequencies listed in the *Request*, with many of them subject to the frequency coordination requirement at multiple sites. Although NYSEG has made considerable progress in requesting frequency coordination from Industry Canada, it has received approval for only a few frequencies at five sites above Line A. Based on its experience to date, NYSEG anticipates that

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<sup>17</sup> In re Niagara Mohawk Power Corporation, *Order*, 9 FCC Rcd 4838, 4838 ¶ 4 (1994).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

the frequency coordination process may consume several additional months and require further revisions to the frequency plan. This uncertainty means that NYSEG needs considerable flexibility in its implementation schedule.

## 5. Equipment

The FCC has extended the construction deadline for licensees that have taken steps toward acquiring equipment. For example, the FCC granted extensions to licensees that began working with vendors to develop the equipment prior to acquiring the licenses,<sup>20</sup> selected a particular technology and equipment,<sup>21</sup> entered into an equipment purchase agreement with a vendor,<sup>22</sup> or postponed equipment orders until after finalizing site and connectivity agreements.<sup>23</sup>

NYSEG has made substantial progress in the acquisition of equipment for the Radio System. On July 1, 2005, NYSEG issued a Request for Proposals on equipment and construction services for the Radio System. Although NYSEG had acquired only a portion of the frequencies necessary for the Radio System at that time, it recognized the need for a technology to accommodate a mixture of Part 22 and Part 90 spectrum due to NYSEG's inability to acquire sufficient spectrum in one radio service. NYSEG reviewed these proposals and selected a next-generation, spectrum-efficient, digital voice and data technology for its vital utility communications. In May 2006, NYSEG entered into an agreement to purchase this technology.

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<sup>20</sup> *E.g.*, In re Monet Mobile Networks, Inc., File Nos. 0000707917, et al, *Order*, 17 FCC Rcd 6452, 6454 ¶ 6 (2002).

<sup>21</sup> *E.g.*, In re Pacific Communications LLC and Coral Wireless, LLC, File No. 0001709518, *Memorandum Opinion and Order*, 19 FCC Rcd 15574, 15578 ¶ 11 (2004).

<sup>22</sup> *E.g.*, In re Interstate Power and Light Co., FCC File Nos. 0001104499, et al, *Order*, 18 FCC Rcd 11051, 11056 ¶ 13 (2003); In re FCI 900, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11079 ¶ 12 (2001).

<sup>23</sup> *E.g.*, *Pacific Communications*, 19 FCC Rcd at 15578 ¶ 11.

Although NYSEG has selected the specific type of equipment for use in the Radio System, equipment orders will not be placed for particular sites until the completion of FCC frequency coordination with Industry Canada and the finalization of the frequency plan and implementation schedule. Once NYSEG orders the equipment, a number of steps will remain, such as the manufacturing, factory testing, delivery, installation, field and coverage testing, and final acceptance for the new radio system in an abbreviated period.

#### 6. Site Acquisition, Profiling, and Development

The FCC has granted extensions to licensees that demonstrate progress in acquiring base station transmitter sites. For example, the FCC has extended the construction deadline for licensees that have engaged in site planning,<sup>24</sup> identified specific transmitter sites,<sup>25</sup> executed leases for sites,<sup>26</sup> or sought local zoning approvals for sites.<sup>27</sup>

NYSEG has made considerable progress on the acquisition of transmitter sites for the Radio System. In particular, NYSEG assembled a team of in-house personnel and engineering consultants to secure transmitter sites. In November 2005, the Site Acquisition Team began analyzing potential transmitter sites throughout the State of New York to determine whether they would provide sufficient coverage to NYSEG's service area. The Site Acquisition Team

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<sup>24</sup> E.g., In re Leap Wireless International, Inc., File Nos. 0000435789, et al, *Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19578 ¶ 13 (2001).

<sup>25</sup> E.g., *Pacific Communications*, 19 FCC Rcd at 15578 ¶ 11; In re Trustee in Bankruptcy for Magnacom Wireless, LLC and Telecom Wrap Up Group, LLC, File No. 0000594028, *Order*, 17 FCC Rcd 9535, 9538 ¶ 8 (2002).

<sup>26</sup> E.g., In re Summit Wireless, LLC and Summit Wireless WOW, LLC, File Nos. 0000818492, et al, *Order*, 17 FCC Rcd 10914, 10916 ¶ 5 (2002) (stating that the licensee has "finaliz[ed] the location for approximately 80 percent of the anticipated sites"); In re Monet Mobile Networks, Inc., File Nos. 0000707917, et al, *Order*, 17 FCC Rcd 6452, 6454 ¶ 6 (2002) (reporting that the licensee "has finalized (or is [in] the process of finalizing) leases for all the locations that it requires to provide service").

<sup>27</sup> E.g., *Trustee*, 17 FCC Rcd at 9538 ¶ 8.

ultimately identified fifty-one sites for the Radio System. Although the Site Acquisition Team has executed leases for approximately seventy-five percent of these sites, it still needs to complete the negotiation of other leases.

Furthermore, NYSEG has retained an engineering firm to conduct site-profiling work at various sites. In Summer 2006, the engineering firm conducted field tests at all fifty-one sites to determine whether the frequency plan would work as a practical matter. The engineering firm is compiling a report for the equipment vendor for the purposes of antenna design and frequency planning. Adjustments to the frequency plan may be needed as a result of this work.

The Site Acquisition Team has also entered into a contract for site development work, including the preparation of structural analyses, the pursuit of associated building permits, the construction of equipment shelters, the purchase and installation of emergency generators, and the fencing of property for security purposes. The contractor has visited and compiled relevant data for each site, and NYSEG has secured zoning approval for over a dozen sites so far.

## 7. Connectivity and Backhaul

The FCC has recognized that the establishment of backhaul connections is a factor in determining whether to grant an extension of the construction deadlines.<sup>28</sup> NYSEG currently anticipates that it will resolve the connectivity and backhaul concerns for the Radio System before the construction deadlines. In particular, NYSEG has assembled a team of utility personnel and engineering consultants to address the connectivity requirements of the Radio System. In April 2006, the Connectivity Team started to evaluate the potential sources of

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<sup>28</sup> *E.g.*, In re PinPoint Wireless, Inc., File Nos. 0000935560, et al, *Order*, 19 FCC Rcd 2686, 2690 ¶ 7 (2004); In re Monet Mobile Networks, Inc., File No. 0000865798, *Order*, 17 FCC Rcd 18381, 18384 ¶ 6 (2002); In re Minnesota PCS Limited Partnership, File No. 0000865251, *Order*, 17 FCC Rcd 16371, 16374 ¶ 6 (2002).

connectivity for the Radio System. While NYSEG has already installed several microwave links to serve as backhaul for the Radio System, it has also issued a Request for Proposals in anticipation of entering into connectivity agreements with service providers.

**B. NYSEG Will Return Unused Licenses to the FCC**

NYSEG will voluntarily return unused Part 22 Paging and Radiotelephone Service licenses to the FCC for licensing to other eligible entities. In the context of the discontinuance rules, the FCC has considered the voluntary return of unconstructed or unneeded licenses as evidence that a licensee has no intention to hoard spectrum.<sup>29</sup> Based on the current frequency plan for the new Radio System, NYSEG anticipates it will not require 119 geographic-area licenses in the 35 MHz and 43 MHz bands. Although NYSEG acquired these Paging and Radiotelephone Service licenses in Auction No. 48, it ultimately decided to construct its system exclusively in the 150 MHz band.

**C. The Radio System Will Use Innovative, Spectrum-Efficient Technology**

A waiver would facilitate NYSEG's deployment of innovative and efficient communications technologies. As mentioned above, section 309(j)(4)(B) indicates that a statutory goal of the construction requirements is "to promote investment in and rapid deployment of new technologies and services."<sup>30</sup> The FCC has also waived the construction

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<sup>29</sup> *E.g.*, In re PageAmerica of New York, Inc., File No. CWD-95-6, Order, 10 FCC Rcd 8703, 8704 ¶ 9 (1995); In re Danny's Two Way Communications, Inc., File No. 24956-CD-P/01-90, *Memorandum Opinion and Order*, 9 FCC Rcd 3192, 3193 ¶ 13 (1994).

<sup>30</sup> 47 U.S.C. § 309(j)(4)(B).

requirements for numerous licensees that have demonstrated a commitment to deploy advanced technologies.<sup>31</sup>

In *Interstate Power and Light*, the FCC granted a five-year construction period to enable a licensee to implement state-of-the-art, spectrum-efficient technology.<sup>32</sup> The licensee was a subsidiary of an electric, gas, and steam utility that offered service over a three-state area.<sup>33</sup> The licensee sought to update and enhance its private, internal communications network by migrating to digital technology.<sup>34</sup> The FCC noted that the licensee would rely on the extension to redesign its system "to maintain future interoperability, enhance channel utilization, and improve system performance and overall frequency efficiency."<sup>35</sup> The FCC concluded that an extension would serve the public interest goal of spectrum efficiency because the licensee would construct a wide-area, technologically advanced system.<sup>36</sup>

Similarly, in *FCI 900*, the FCC granted a three-year extension for 900 MHz MTA licensees to construct systems using advanced digital technologies.<sup>37</sup> The FCC found that these digital technologies would enable licensees to (1) expand their capacity without suffering a degradation of service; (2) accelerate the introduction of advanced services; (3) enhance system

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<sup>31</sup> E.g., In re *Interstate Power and Light Co.*, FCC File Nos. 0001104499, et al, *Order*, 18 FCC Rcd 11051, 11057 ¶ 17 (2003); In re *FCI 900, Inc.*, *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11077-78 ¶ 8 (2001).

<sup>32</sup> *Interstate Power and Light*, 18 FCC Rcd at 11058 ¶ 18.

<sup>33</sup> *Id.* at 11051-52 ¶ 2.

<sup>34</sup> *Id.* at 11052 ¶ 2.

<sup>35</sup> *Id.* at 11056 ¶ 15.

<sup>36</sup> *Id.* at 11056 ¶ 15, 11057 ¶ 16, 11058 ¶ 18.

<sup>37</sup> In re *FCI 900, Inc.*, *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11077-78 ¶ 8 (2001).



robustness, (4) improve coverage, and (5) offer flexibility to mitigate interference.<sup>38</sup> Based on these advantages, the FCC concluded that an extension would "promote the public interest by facilitating the deployment of advanced 900 MHz digital technologies."<sup>39</sup>

NYSEG warrants an extension to upgrade its private land mobile radio system to a next-generation, spectrum-efficient, digital system. As in *Interstate Power and Light* and *FCI 900*, NYSEG will realize many of the same advantages of digital technology. For example, the Radio System will maximize spectrum efficiency and increase capacity through trunking, narrowband operations, and frequency re-use. The Radio System will eliminate or mitigate the interference problems associated with NYSEG's existing systems.

The Radio System will also improve the coverage of the system and offer interoperability among NYSEG's company divisions. As discussed in the *Request*, NYSEG currently operates two separate conventional radio systems that serve discrete geographic regions of its service area. While one system is comprised of a VHF digital simulcast system serving three company divisions, the other system is a 48 MHz single-channel simplex system serving ten other company divisions. These radio systems generally lack the ability to intercommunicate. By contrast, the new Radio System will consist of a single integrated, statewide system. The Radio System will feature fifty-one sites, with three frequency pairs per site, that will provide mobile radio coverage throughout each of NYSEG's divisions. The Radio System will also have a centralized switching facility that will provide seamless roaming within and across NYSEG's entire service area.

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<sup>38</sup> *Id.* at 11078 ¶ 8.

<sup>39</sup> *Id.*

In addition, the Radio System will improve system performance for NYSEG's employees. For example, the Radio System will better equip NYSEG to respond to emergencies and to provide day-to-day maintenance of the electric and gas transmission and distribution systems. The Radio System will also use exclusively licensed frequencies under Part 22 and trunked frequencies under Part 90. NYSEG will have backup power capability at transmitter and repeater sites so that NYSEG field crews can more effectively work to restore electric service in the case of widespread power outages. The Radio System will ensure that employees effectively communicate while in the field, greatly reducing communications and response times.

Finally, the Radio System will provide next-generation communications capabilities. The digital technology will improve the privacy of NYSEG's communications and allow communications over a single wireless infrastructure. This technology also offers the capability for data communications and multicast Internet Protocol routing.

#### **D. NYSEG Will Provide Coverage to Rural Areas**

A waiver would also enable NYSEG to use this spectrum in some of the most rural areas of New York State. While section 309(j)(4)(B) requires the FCC to "include performance requirements . . . to ensure prompt delivery of service to rural areas" on auctioned spectrum,<sup>40</sup> the FCC has also granted numerous construction waivers to licensees proposing to provide coverage to rural areas.<sup>41</sup>

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<sup>40</sup> 47 U.S.C. § 309(j)(4)(B); *see* 47 U.S.C. § 151; In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order*, 19 FCC Rcd 19078, 19081 ¶ 4 (2005); Federal Communications Commission, Strategic Plan 2006-2011 at 1, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-261434A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261434A1.pdf).

<sup>41</sup> *E.g.*, In re PinPoint Wireless, Inc., File Nos. 0000935560, et al, *Order on Reconsideration*, 19 FCC Rcd 2686, 2689-90 ¶ 6-7 (2004); In re Summit Wireless, LLC and Summit Wireless WOW, (continued...)

NYSEG will require additional time to implement the Radio System throughout its widely dispersed service area. Under the current implementation schedule, NYSEG will use all of the Part 22 and Part 90 licenses included on the *Request* in some of the most rural portions of New York. NYSEG must provide radio coverage to the rural areas within its service area in order to safely and efficiently provide electric and gas service to customers living in those areas. To transmit a signal to those areas, NYSEG anticipates using approximately twenty-nine antenna structures located in eighteen rural counties.<sup>42</sup> These rural areas include at least four antenna structures in the Adirondack Park, which has more stringent tower siting regulations. Furthermore, the implementation of the Radio System in rural areas presents unique challenges because of their inherently remote nature.

**E. A Waiver Will Promote Spectrum Use**

A waiver would also promote the use of Part 22 Paging and Radiotelephone Service spectrum. As described above, NYSEG currently plans to initiate operations on several of these licenses by as early as mid-April 2008. NYSEG anticipates completing construction of the entire Radio System by the end of 2009.

If the FCC were to cancel and re-license this spectrum, it would likely cause greater delay in the use of the spectrum. The FCC has not even broached the possibility of holding another

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LLC, File Nos. 0000818492, et al, *Order*, 17 FCC Rcd 10914, 10915-16 ¶ 4 (2002); In re National Rural Telecommunications Cooperative, File No. CWD 99-004, *Order*, 15 FCC Rcd 6637, 6638-39 ¶ 3 (1999); In re Southern Company, *Memorandum Opinion and Order*, 14 FCC Rcd 1851, 1858-59 ¶ 14-16 (1998).

<sup>42</sup> The FCC defines "rural area" as "those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data." In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 19078, 19087 ¶ 11 (2004).

auction of Paging and Radiotelephone Service spectrum. If these licenses were canceled, the FCC would have to design and hold a spectrum auction, grant licenses, and wait for the licensees to construct their systems. Because auction winners may take up to five years to construct their paging licenses,<sup>43</sup> these licenses could lie fallow for many years.

Furthermore, an auction of this spectrum would not necessarily guarantee its purchase. When the FCC initially auctioned the Paging and Radiotelephone Service frequencies in 2001, thousands of licenses remained unsold. Even when the FCC re-auctioned the spectrum in 2003, NYSEG was the only bidder for a number of licenses in its service area. The absence of competing bidders suggests that this spectrum could remain unsold even if the FCC held an auction. Thus, a waiver of the construction deadlines will help to fulfill the FCC's policy objective of vigorous spectrum use and will put the spectrum to its highest and best use.

#### **F. A Waiver Will Permit Flexible Use of the Geographic-Area Spectrum**

A waiver would be consistent with congressional and FCC efforts to introduce more flexibility for geographic-area licensees in the Paging and Radiotelephone Service.

Congress and the FCC have pursued a course of deregulation of wireless operations for more than a decade to ensure that spectrum is allocated in accordance with its highest and best use.<sup>44</sup> In the Omnibus Budget Reconciliation Act of 1993, Congress added section 309(j) to the Communications Act to provide the FCC with the express authority to use competitive bidding to choose among mutually exclusive applications for initial licenses.<sup>45</sup> The FCC interpreted this

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<sup>43</sup> 47 C.F.R. § 22.503(k).

<sup>44</sup> Federal Communications Commission, *Strategic Plan FY 2003-FY 2008*, at 5 (2002).

<sup>45</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (1993 Budget Act), Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 et seq.). Congress revised this competitive bidding mandate in the 1997 Balanced Budget Act to require the FCC to use competitive bidding. Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

statute as "promoting economic growth and enhancing access to telecommunications service offerings for consumers, producers, and new entrants" and adopted rules to allow the rapid implementation of new and innovative services, encourage efficient spectrum use, and foster economic growth.<sup>46</sup> These competitive bidding requirements created economic incentives to ensure that the spectrum naturally flows to the "highest and best use."

The FCC also adopted or modified countless rules to provide more flexibility in traditional CMRS spectrum bands. For example, in 1994, the FCC overhauled its rules to afford Public Mobile Services licensees greater flexibility in providing service to the public.<sup>47</sup> The FCC revised its Part 22 rules to permit (1) the concurrent use and licensing of facilities for common carrier and non-common carrier services, (2) the use of multi-channel transmitters, and (3) the addition of "internal" transmitters to existing systems without notification to the FCC.<sup>48</sup> In 1995, the FCC further relaxed its rules by repealing its prohibition on the provision non-interconnected dispatch service by Part 22 licensees, as long as interconnected service is available.<sup>49</sup> In 1996, the FCC revised its Part 22 rules again to allow CMRS paging providers to offer exclusively fixed wireless services on a co-primary basis with mobile services.<sup>50</sup> In 2002,

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<sup>46</sup> In re Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PR Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2349 ¶ 3-7 (1994).

<sup>47</sup> In re Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-116, *Report and Order*, 9 FCC Rcd 6513 (1994).

<sup>48</sup> *Id.* at 6519, 6527-28, ¶ 25, 67-70.

<sup>49</sup> In re Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, *Report and Order*, 10 FCC Rcd 6280, 6297 ¶ 29 n.96 (1995), *aff'd*, *Memorandum Opinion and Order*, 12 FCC Rcd 9962, 9967-68 ¶ 12 (1997).

<sup>50</sup> In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965, 8977 ¶ 24 (1996).

the FCC removed the restrictions on the provision of incidental services by Part 22 licensees, including rules on rates and the quality and availability of the primary service.<sup>51</sup> In 2005, the FCC revised or eliminated several Part 22 rules based on such factors as technological advances and supervening changes to related FCC rules.<sup>52</sup>

This trend toward flexible use supports the waiver of the construction deadlines for NYSEG. If the FCC were to grant a waiver, NYSEG could put these geographic-area licenses to the "highest and best use" by using them to upgrade NYSEG's private, internal radio system to a next-generation, spectrum-efficient, digital system for voice and data communications.

### **III. A WAIVER WOULD BE IN THE PUBLIC INTEREST**

As a general matter, and for all the reasons state above, a waiver of the construction deadlines would serve the public interest. In particular, a waiver would enable NYSEG to implement a fully integrated, innovative radio system throughout its statewide service area for critical utility communications. A waiver would permit NYSEG to intercommunicate with public safety agencies during emergencies and would avoid the potential for NYSEG being compelled to invest in the development of a substandard radio system in an effort to meet its need for reliable communications or to simply meet the construction deadlines. As mentioned above, a waiver would also encourage the growth and rapid deployment of innovative and spectrum-efficient communications technologies and ensure the use of this spectrum in some of

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<sup>51</sup> In re Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18435 ¶¶ 67-68 (2002).

<sup>52</sup> In re Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, WT Docket No. 03-103, *Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4445-54 ¶¶ 99-133, 4456-63 ¶¶ 141-64 (2005).

the most rural areas of New York State for the safe and reliable delivery of essential utility services to those areas.

#### **A. The Radio System Will Support Critical Utility Communications**

The public interest supports a waiver of the construction deadlines because these licenses will comprise an integral part of NYSEG's Radio System. If these licenses were to terminate automatically for a failure to construct, it would impair the deployment of a fully integrated, innovative system throughout NYSEG's service area for critical utility communications.

The federal government has repeatedly recognized the importance of communications systems that support utility operations. In 1982, Congress expressed a policy of supporting the special needs of utilities in their attempts to meet legitimate telecommunications requirements.<sup>53</sup> In 1997, Congress enacted legislation to ensure that the communications systems of public safety radio services, including utilities, would not be compromised.<sup>54</sup> These provisions indicate that the protection of utility communications systems is in the public interest.

The National Telecommunications and Information Administration ("NTIA") has also acknowledged the importance of utility uses of spectrum. In response to appropriations legislation enacted in 2001,<sup>55</sup> the NTIA released a report on utility use of spectrum in which it

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<sup>53</sup> S. Rep. No. 191, 97th Cong., 2d Sess. (1982), *reprinted* in 1982 U.S.C.C.A.N. 2237, 2250 ("In managing spectrum, the FCC . . . first should attempt to meet the requirements of those radio users which render important services to large groups of the American public, such as governmental entities and *utilities*, rather than the requirements of those users which would render benefits to relatively small groups.") (emphasis added).

<sup>54</sup> 47 U.S.C. § 309(j)(2) (defining "public safety radio services" to include *private internal radio services used by non-government entities*); House Conf. Rep. No. 105-217, at 572 (1997), *reprinted* in 1997 U.S.C.C.A.N. 176, 192 (stating that section 309(j)(2) covers "'private internal radio services' used by *utilities*, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments") (emphasis added).

<sup>55</sup> Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 106-553 (2001).

concluded that utilities provide a public service and are vital components of the Nation's critical infrastructure,<sup>56</sup> that "continued use of spectrum is essential to the current and future operations" of utilities,<sup>57</sup> and that alternatives to a utility's own private internal communications system are often inadequate.<sup>58</sup> In addition, the NTIA Report concluded that the significance of energy, water, and railroad service providers and the urgency of spectrum issues "may have changed as a result of the September 11th events" and recommended that the FCC should "accommodate the increasing role these industries play in maintaining quality of life."<sup>59</sup>

The FCC has recognized that utilities are part of the nation's critical infrastructure and need reliable communications facilities to fulfill their public service obligations.<sup>60</sup> For example, in the *800 MHz Report and Order*, the FCC concluded that "the very nature of services provided by . . . [utilities] involves potential hazard to life and property," that utilities "often work hand in

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<sup>56</sup> Marshall W. Ross and Jeng F. Mao, Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 Pub. L. 106-553, NTIA Special Publication 01-49, at 3-3 (Jan. 30, 2002).

<sup>57</sup> *Id.* at xvii. The NTIA found that utilities use spectrum to (1) make emergency repairs, (2) comply with existing state and federal service requirements, and (3) efficiently and safely conduct their daily activities. *Id.* at 3-3, 3-8.

<sup>58</sup> *Id.* at 3-23 through 3-24.

<sup>59</sup> *Id.* at xxii.

<sup>60</sup> In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels; WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 14974 ¶ 4 n.11 (2004); e.g., In re The 4.9 GHz Band Transferred from Federal Use, WT Docket No. 00-32, *Second Report and Order and Further Notice of Proposed Rule Making*, 17 FCC Rcd 3955, 3971 ¶ 33 (2002) ("The very nature of the services provided by [utilities] involve potential hazards, or responding to emergency circumstances. Furthermore, such entities need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public. We also recognize that in the course of their duties, these entities will need to interact with the traditional public safety service providers, and the inability to do so may affect the ability of both groups of public safety entities to fulfill their missions.").



hand with public safety officials at the scene of an incident," and that "reliable [utility] radio communications have long proven essential in speeding recovery from natural or man-made disasters."<sup>61</sup>

The public interest supports a waiver of the construction deadlines because these licenses will comprise an integral part of NYSEG's Radio System. Under the current frequency plan, NYSEG envisions using some combination of the licenses at forty-five of the fifty-one sites. As described above, NYSEG has invested several years in a radio project involving considerable engineering and technical challenges to replace its existing radio system with a state-of-the-art, digital communications system.

The Radio System will improve the quality of NYSEG's critical utility communications, provide more efficient use of spectrum, and offer an integrated communications system. These licenses will enable NYSEG to reduce the occurrences of harmful interference by minimizing channel congestion, providing an adequate number of talk paths, and enhancing truck-to-truck communications. Furthermore, the Radio System will employ next-generation, digital technology that improves spectrum efficiency and increases the overall capacity of the system. In addition, these licenses will provide coverage to a large portion of NYSEG's service area. These licenses will permit NYSEG's employees to intercommunicate throughout its statewide service area and to roam seamlessly from division to division.

The Radio System also will directly benefit the public because it will assist NYSEG in maintaining the safety and reliability of the electric grid and natural gas delivery infrastructure. In particular, the integrated, statewide system will ensure effective communications among employees in the field. The Radio System will greatly reduce communications and response

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<sup>61</sup> *800 MHz Report and Order*, 19 FCC Rcd at 14974 ¶ 4 n.11.

times across NYSEG's service area, better equipping NYSEG to respond to emergencies and to engage in day-to-day maintenance of the electric and gas transmission and distribution systems. Furthermore, the use of exclusively licensed frequencies under Part 22 and trunked frequencies under Part 90 will mitigate interference problems and help protect the safety of NYSEG's employees as they work around high-voltage electrical lines and high-pressure gas lines.

For example, in late June 2006, NYSEG's existing communications system was crucial to the restoration of electric and gas service following the devastating floods in upstate New York. On July 1, President Bush declared several counties in NYSEG's service territory to be major disaster areas after severe storms resulted in the flooding of the Susquehanna and Delaware Rivers. While NYSEG relied on this communications system to limit the amount of damage to the electric and gas infrastructure, it also used the system to relay distress messages from stranded citizens to local 911 centers. In addition, NYSEG used its communications system to notify field crews of a dam break, alerting them to get to higher ground. Thus, a waiver would ensure that NYSEG has the flexibility to make necessary improvements to its system.

#### **B. NYSEG Will Intercommunicate with Public Safety Users**

As noted above, NYSEG will use the Radio System to intercommunicate with public safety agencies during emergencies.<sup>62</sup> In particular, NYSEG and local public safety agencies

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<sup>62</sup> The FCC has ruled that the provision of service to public safety entities will serve the public interest. *E.g.*, In re Southern Company, *Memorandum Opinion and Order*, 14 FCC Rcd 1851, 1856 ¶ 10 (1998); see In re Nextel Communications, Inc., *Order*, 15 FCC Rcd 93, 96 ¶ 6 n.21 (1999). In *Southern Company*, the FCC waived the construction requirement to enable a Specialized Mobile Radio licensee to provide "reliable, state-of-the-art wide-area public safety communications." *Southern Company*, 14 FCC Rcd at 1858 ¶ 13. The FCC noted that it "strives to avoid unnecessary disruption of critical state, federal, and local governmental public safety functions, and has repeatedly given special recognition to the protection of services that are integral to public safety needs." *Id.* at 1856 ¶ 10; see *Nextel Communications*, 15 FCC Rcd at 96 ¶ 6 n.21.

share a channel to coordinate their field activities during emergency situations. This coordination is particularly important because NYSEG often must act before traditional public safety agencies may respond to the emergency. For example, firefighters require NYSEG to shut off the electricity and gas to any burning structure. Otherwise, the live electrical wires pose a dangerous risk to the firefighters because the water they use to douse the flames conducts electricity, and the presence of natural gas could lead to extreme combustion and/or explosion. Public safety personnel will also contact a NYSEG representative before approaching victims in accidents involving downed power lines. Thus, a waiver would enable NYSEG to continue providing these invaluable services to public safety users.

### **C. NYSEG Should Not Have to Implement a Non-Viable System**

The FCC has previously granted waivers to prevent licensees from having to construct a "bare-bones" system merely to preserve the licenses.<sup>63</sup> For example, in *Pacific Communications*, the FCC concluded that the public interest required a waiver to permit a PCS licensee "to construct a commercially viable, technologically advanced system, which will put the spectrum to a more competitive and efficient use."<sup>64</sup> In *Rush Network*, the FCC similarly found that the failure to grant a waiver of the 220 MHz construction deadline "would needlessly require [the licensee] to spend time and money constructing facilities it is unlikely to use."<sup>65</sup>

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<sup>63</sup> *E.g.*, In re *Pacific Communications LLC and Coral Wireless, LLC*, File No. 0001709518, *Memorandum Opinion and Order*, 19 FCC Rcd 15574, 15575-76 ¶ 6 (2004); In re *Rush Network Corp.*, *Order*, 12 FCC Rcd 9731, 9732 ¶ 5 (1997).

<sup>64</sup> *Pacific Communications*, 19 FCC Rcd at 15576 ¶ 6.

<sup>65</sup> *Rush Network*, 12 FCC Rcd at 9732 ¶ 5; *see* In re *FCI 900, Inc.*, *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11078 ¶ 9 (2001) ("the public interest would be ill-served by compelling 900 MHz MTA licensees to devote scarce resources to the construction of stopgap legacy analog systems in order to meet the five-year construction deadline."); In re *Global Cellular Communications, Inc.*, File No. CWD 98-98, *Order*, 13 FCC Rcd 16252, 16254 ¶ 4 (1998) ("we agree with Global that it would be wasteful to require it to construct a system that is  
(continued...)

NYSEG should not have to install temporary or obsolete equipment merely to preserve the Part 22 and Part 90 licenses. Because NYSEG will completely replace its existing system and technology, it would waste a substantial amount of time and money to install and operate such equipment for the sole purpose of satisfying construction deadlines.

#### **IV. THE APPLICATION OF THE CONSTRUCTION DEADLINES WOULD BE INEQUITABLE, UNDULY BURDENSOME, AND CONTRARY TO THE PUBLIC INTEREST**

NYSEG warrants a waiver of the construction deadlines because of its unique circumstances. While a waiver would avoid the imposition of inequitable and unduly burdensome obligations on NYSEG, a waiver would also be appropriate because NYSEG has no reasonable alternative to the extension of the construction deadlines.

##### **A. The Radio System Presents Unique or Unusual Factual Circumstances**

The FCC has concluded that licensees may demonstrate the existence of unique circumstances based on a combination of factors.<sup>66</sup> Although any single factor might not qualify for a waiver of the construction deadlines, in the aggregate they could present unique circumstances. For example, in *Summit Wireless*, the FCC concluded that the unique circumstances warranted a waiver because the licensee had recently acquired the licenses, made diligent efforts to construct the system, and served rural areas.<sup>67</sup>

NYSEG similarly warrants an extension of the construction deadlines because of the unique circumstances associated with its Radio System. As discussed above, NYSEG recently

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'not likely compatible with its business plan and will need to be ripped out in the near future if installed now.'").

<sup>66</sup> E.g., In re Summit Wireless, LLC and Summit Wireless WOW, LLC, File Nos. 0000818492, et al, *Order*, 17 FCC Rcd 10914, 10915-16 ¶ 4-5 (2002).

<sup>67</sup> *Id.*

acquired many of the Part 22 and Part 90 licenses and has made significant progress on the construction of the Radio System. NYSEG will deploy a state-of-the-art, spectrum-efficient technology covering some of the most rural portions of New York State. The Radio System will also support critical utility communications and intercommunicate with public safety users.

NYSEG also identified several other unique circumstances in the *Request* relating to the size and complexity of the radio operations and the climatic conditions of New York State. As discussed in the *Request*, this size and complexity arises, in part, from the wide-area nature of NYSEG's operations. NYSEG will implement a single integrated, statewide system at fifty-one sites across forty percent of upstate and western New York State. The Radio System also will use Part 22 Paging and Radiotelephone and Part 90 PLMRS licenses at most, if not all, sites. This mixture of licenses complicates the system implementation because Part 22 and Part 90 licenses have different technical, operational, and construction rules. The complexity also results from the interdependent nature of the various steps to implement the Radio System. Even though these steps may appear to constitute independent tasks, they are inextricably intertwined and often preclude NYSEG from proceeding with certain steps until it completes others.

NYSEG also must schedule the construction of its Radio System to avoid severe winter weather in upstate and western New York. While "[t]he average snowfall is greater than 70 inches over some 60 percent of New York's area,"<sup>68</sup> the average annual snowfall in portions of NYSEG's service area greatly exceeds that amount. NYSEG's sites near Lake Erie may receive up to 150-180 inches of snow per year.<sup>69</sup> Winter weather arrived early this year, as the Buffalo

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<sup>68</sup> The Climate of New York, [http://nysc.eas.cornell.edu/climate\\_of\\_ny.html](http://nysc.eas.cornell.edu/climate_of_ny.html)

<sup>69</sup> *Id.*

region received nearly two feet of snow on October 12-13, 2006.<sup>70</sup> These unique weather conditions preclude or inhibit construction in portions of NYSEG's service area between approximately November and April.

If the FCC were to decline a waiver, NYSEG would incur inequitable and unduly burdensome costs. As discussed above, NYSEG could potentially have to (1) purchase or lease analog equipment for Part 22 and Part 90 operations; (2) install the equipment on its towers; (3) operate the analog system temporarily; and (4) dismantle and remove the analog equipment once the new equipment is available. Even assuming NYSEG could afford these additional costs, it would still encounter difficulty using these licenses at sites above Line A because of the Canadian frequency coordination requirement.

#### **B. NYSEG Has No Reasonable Alternative**

NYSEG has no reasonable alternative to an extension of the construction deadlines. As mentioned in the *Request*, NYSEG must replace its existing radio system with state-of-the-art, spectrum-efficient, digital technology to meet its critical utility communications requirements. To offset the severe spectrum shortages in New York, NYSEG had to cobble together Part 22 and Part 90 licenses from a variety of sources. NYSEG also could not circumvent the time-consuming frequency coordination process with Industry Canada, which has taken, on average, several months per application, because it will need to use the licenses to provide coverage over its utility operations in western and upstate New York. Thus, an extension of the construction deadline is essential to allow NYSEG to construct its Radio System in an efficient, orderly manner.

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<sup>70</sup> *Plenty without Power after Buffalo-area Storm*, CNN.com, Oct. 14, 2006, available at <http://www.cnn.com/2006/WEATHER/10/14/october.snow.ap/index.html>.

## V. CONCLUSION

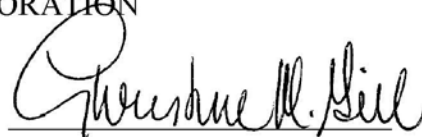
NYSEG warrants an extension and consolidation of the construction deadlines for the Part 22 and Part 90 licenses. As discussed above, NYSEG has made good faith efforts to implement its Radio System in a timely manner. Although NYSEG has made substantial progress over the last several months, it still requires an extension and consolidation of its construction deadlines to complete the implementation of this wide-area Radio System.

**WHEREFORE, THE PREMISES CONSIDERED,** NYSEG respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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